SALES — CONDITIONAL SALES — REMEDIES OF SELLER: BREACH OF A COLLATERAL CONTRACT AS DEFENSE TO REPLEVIN. — The seller of a piano under a conditional sale contract agreed that he would use reasonable efforts to sell pianos to those whose names the buyer sent in, and would apply the commissions therefrom on the purchase price. The seller now brings replevin for the piano, and the buyer sets up a breach of this agreement. *Held*, that the seller may recover. *Kohler & Chase* v. *Turner*, 146 Pac. 393 (Wash.).

In a conditional sale a breach of warranty by the seller is, by the weight of authority, no defense to an action of replevin. *Hauss* v. *Savarese*, 87 N. Y. Misc. 330, 149 N. Y. Supp. 938; *People's Electric Ry. Co.* v. *McKeen Motor Car Co.*, 214 Fed. 73. See *contra*, *Guilford, Wood & Co.* v. *McKinley*, 61 Ga. 230, 233. These cases are often explained on the ground that no action for breach of warranty can accrue until title has passed. See *Frye* v. *Milligan*, 10 Ont. 509. In substance, however, a conditional sale amounts to an executed sale with a chattel mortgage back. See WILLISTON, SALES, § 326. Thus the sounder explanation is that, as the buyer's right of action neither gives him a lien on the goods, nor prevents him from being in default, it can be no defense to the seller's action to recover possession. *Blair* v. *Johnson & Sons*, 111 Tenn. 111, 76 S. W. 912. But if the seller has himself prevented the performance of the condition, he cannot claim that the buyer is in default. Thus, a tender of payment by the buyer and refusal by the seller will vest title in the buyer and leave the seller to his action for the price. *Ingersoll-Sergeant Drill Co.* v. *Worthington*, 110 Ala. 322, 20 So. 61; *Leflore* v. *Miller*, 64 Miss. 204, 1 So. 99. The situation is analogous if the seller has agreed to let the buyer work out the purchase price, and refuses to give him the work to do. *Ramsey* v. *Capshaw*, 71 Ark. 408, 75 S. W. 479. Hence, when the seller's breach of contract has prevented the buyer from paying in the way agreed upon, the seller should be unable to assert the default in those payments. *Gilbert Co.* v. *Husted*, 50 Wash. 61, 66, 96 Pac. 835, 836; see *Brownfield* v. *Jones Co.*, 98 Ark. 495, 500, 136 S. W. 664, 666. The language of the court in the principal case does not seem in accordance with this view, but the case may be explained on the ground that it did not appear that the buyer was not in default in an amount in excess of that which would have been paid by means of the commissions.

USURY — VALIDITY OF USURIOUS MORTGAGE — RIGHT OF INNOCENT PARTY TO THE MORTGAGE TO FORECLOSE: NEW YORK LAW. — The defendant attempted to evade the New York statute which declares all contracts for usurious loans absolutely void (N. Y. CONSOL. LAWS, GENERAL BUSINESS LAW, INTEREST AND USURY, § 373), by executing a mortgage to a dummy mortgagee, and procuring its discount to the plaintiff at an illegal rate of interest. Though the purchase price, which was paid to an agent, went directly to the mortgagor, the mortgagee was ignorant of the nature of the transaction and supposed that the mortgage was merely assigned to him. *Held*, that he may enforce the mortgage to the extent of the consideration paid. *Schanz* v. *Sotscheck*, 152 N. Y. Supp. 851 (App. Div.)

Though on principle the purchase of an accommodation note, since the indorsee is buying the credit of a third person, is not a loan but a true sale, New York and several other states hold such a transaction usurious if the note is discounted at more than the legal rate of interest. *Claflin* v. *Boorum*, 122 N. Y. 385, 25 N. E. 360; *Whitten* v. *Hayden*, 7 Allen (Mass.) 407; *cf. Eastman* v. *Shaw*, 65 N. Y. 522. *Contra*, *Dickerman* v. *Day*, 31 Ia. 444; *Holmes* v. *State Bank of Duluth*, 53 Minn. 350; *Moore* v. *Baird*, 30 Pa. 138. But the purchase of a mortgage from a dummy mortgagee is distinguishable. Since it is in substance the giving of money to the mortgagor in reliance on his credit alone, it is a true loan, and properly subject to the usury law. Entirely apart from the New York view as to accommodation paper, therefore, the mortgage in the